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MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Bob Butterworth, Attorney General of the State of Florida, sincerely appreciates the invitation from the United States Senate Special Committee on Aging to provide testimony regarding Florida's experiences in investigating, prosecuting and curtailing living trust scams. And I am honored to appear before this Committee on behalf of General Butterworth.

Attorney General Butterworth is very interested in, and supportive of, the work of this Committee. Almost 20 percent of the population of our State is 65 years of age or older. Florida has the highest concentration of senior citizens over the age of 65 among the nation's 50 states. Today, one out of every three Floridians aged 65 and older lives alone, making them prime targets for various types of exploitation and abuse.

The fastest growing segment of our population is age 85 and older. A significant percentage of this age group, perhaps up to one-half, suffer a cognitive disability, which again increases the susceptibility to exploitation.

Of course, a large percentage of our senior citizens are retirees, who have moved to Florida from all areas of our great country. In most situations, their sons, daughters and other close relatives reside in distant states. New bonds of friendship are formed in Florida, but the absence of the traditional family network creates a type of isolation that is ripe for exploitation in a manner not experienced by prior generations. The isolation, and susceptibility to exploitation, increases when a spouse dies.

Some of our elderly residents of Florida are wealthy, but most are not. Most live on fixed incomes and accumulated savings that must be available to support them for the remainder of their lives. Often the assets and wealth of our senior citizens are liquid, i.e., in the form of stocks, bonds, certificates of deposit, savings bonds and other savings accounts. This fact also increases their vulnerability to scam artists who can take the money and run. Unlike younger Americans who are employed, senior citizens who lose their assets often lose their sole source of income and continued subsistence. This wealth cannot be replaced.

It is important to analyze closely our experiences in Florida since the entire nation is "greying." For example, it is estimated that by the mid-2020's, more than 69 million Americans will be 65 and older -- a number nearly double the current population of our nation's largest state, California. By that point, elderly persons (65 and older) will comprise almost 20 percent of our national population. Florida is a "petri dish" of a greying America in the next several decades. The rest of the country can learn from our experiences. Using a metaphor that can be appreciated by Floridians, Attorney General Butterworth has labeled the issues that will accompany the greying of America as "The Approaching Storm."⁽¹⁾

A top priority of General Butterworth is utilizing our law enforcement authority to protect elderly persons to the maximum extent possible, and we appreciate the work of this Committee since you have identified and studied the issues which are of great importance to us. We suggest that many of the issues regarding exploitation of the elderly are interrelated, and arise because of the characteristics and vulnerabilities of our elderly population. For example, we have followed with interest the work of this Committee on the subject of predatory lending and its impact on the nation's elderly. Scam artists who attempt to steal assets through living trusts scams employ many of the same tactics as those who attempt to rob senior citizens of the equity in their homes.

As we address the issue before the Committee today, we should start by emphasizing that a revocable living trust is a valid estate planning device. A person establishing a revocable living trust (identified as the "settlor") passes title of her property to the trustee (who is the same person as the settlor). The trust is administered for the settlor's own benefit during her life and designates the disposition of the property upon the death of the settlor. Property passed in this manner is not subject to the probate process that is used to distribute property of persons who die with a will. Such a trust can also provide tax advantages to persons in certain financial circumstances.

My purpose today, however, is not to discuss the advantages or disadvantages of wills or revocable living trusts. The appropriateness of the estate planning device used depends on the circumstances of the individual, and that decision should be part of a planning process effectuated by knowledgeable persons who are licensed by a state to provide such advice. Today's subject concerns situations in which revocable living trusts are marketed without regard to the needs of the targeted consumers. Deceptive and unfair practices are often used to convince persons to purchase such a trust, and the marketing usually is conducted by persons who are not licensed to offer legal advice. Trusts are not designed to be "sold" like automobiles. We will show by our experiences that persons seeking to "sell" revocable living trusts with a "one-size-fits-all" trust are not advancing the best interest of the "buyer" and, in most instances, are violating the laws of our State.

I will describe our law enforcement experience in addressing living trust scams. I also will explain the readily identifiable characteristics of the exploitation. Finally, I will offer our suggestions for addressing this issue in the future.

I. LAW ENFORCEMENT EXPERIENCE

A. 1992 Opinion of The Supreme Court of Florida

Estate planning is properly a "process" to be engaged in between a lawyer and her client. On the other hand, persons seeking to "sell" a one-size-fits-all revocable living trust rather than engage a client in an estate planning process often -- if not always -- are nonlawyers. Thus, an issue initially arising in Florida was whether such activities by nonlawyers constituted the unlawful practice of law. To resolve this issue, the Florida Bar Standing Committee on the Unlicensed Practice of Law petitioned the Florida Supreme Court for an advisory opinion. In an opinion issued on December 24, 1992, the Supreme Court held:

[T]he assembly, drafting, execution, and funding of a living trust document constitute the practice of law. We also agree that a lawyer must make the determination as to the client's need for a living trust and identify the type of living trust most appropriate for the client. As this Court stated in *In re Joint Petition of the Florida Bar & Raymond, James & Associates, Inc.*, 215 So.2d 613, 613-14 (Fla. 1968), "[g]iving legal advice . . . concerning the application, preparation, advisability or quality of any legal instrument or document or forms thereof in connection with the disposition of property inter vivos or upon death" constitutes the practice of law and may not be carried on by nonlawyers. A living trust document involves the disposition of property at death, and consequently requires legal expertise. However, consistent with the Court's opinion in *Raymond, James*, gathering the necessary information for the living trust does not constitute the practice of law, and nonlawyers may properly perform this activity.

The Florida Bar Re Advisory Opinion -- Nonlawyer Preparation of Living Trusts, 613 So.2d 426, 427-428 (Fla. 1992).

B. American Association for Senior Citizens

The involvement of lawyers, of course, does not immunize deceptive marketing practices from legal challenge. In 1994, a number of states worked together to correct the deceptive marketing of living trusts. In addition to Florida, the states involved were Arizona, Arkansas, Colorado, Connecticut, Idaho, Illinois, Kansas, Kentucky, Massachusetts, Minnesota, Missouri, New Mexico, New York, North Carolina, Ohio, Texas, Utah, Vermont, Washington and Wisconsin. The deceptive practices were being effectuated by an organization known as the American Association for Senior Citizens (AASC) and its lawyers, Pre-Paid Legal Services, Inc. (Prepaid).

AASC engaged in a door-to-door sales campaign to solicit senior citizens to become members of AASC. The primary "benefit" of membership was a living trust prepared by Prepaid. AASC told seniors that a living trust was appropriate for everyone; they also misrepresented the burdens of the probate process and the advantages of a living trust. Inasmuch as AASC had few assets, the states directed their enforcement efforts at Pre-Paid Legal Services, Inc. Acting pursuant to the states' consumer protection laws (in Florida the consumer protection law, also known as the "Little FTC Act," is Chapter 501, Part II, Florida Statutes), the states obtained an ASSURANCE OF DISCONTINUANCE/VOLUNTARY COMPLIANCE which ended the deceptive practices and provided refund opportunities for more than 3,000 consumers. See Attachment B.

C. American Senior Citizen Alliance

Also in 1994, Attorney General Butterworth filed a lawsuit against another company that was deceptively marketing living trusts to elderly Floridians. American Senior Citizen Alliance (ASCA), a for-profit corporation owned and managed by nonlawyers, solicited prospective customers by mass mailings which appeared to come from a governmental-endorsed source. The solicitation envelope included an eagle stamp that read "Official Business Only." Another line on the envelope said "Buy U.S. Savings Bonds" and warned of criminal penalties that could come from giving the envelope to anyone other than the addressee. Senior citizens who responded to the solicitation were visited in their homes by a nonlawyer who utilized a high-pressure sales presentation. The sales person discussed the disadvantages of wills and the advantages of living trusts; he answered specific legal questions and gave tailored legal advice. The customers were told, however, that an attorney would prepare the legal documents.

The Attorney General received complaints from Floridians who paid money to the company but received neither the trust documents or a refund. In May, 1994, the Attorney General sued ASCA and its officers under Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes. See Attachment C. The Attorney General promptly obtained a temporary order shutting down the company. In June of 1994, the company filed a petition for bankruptcy, pursuant to Chapter 7 of the United States Bankruptcy Code. The Attorney General was unable to obtain refunds for consumers due to the bankruptcy filed by ASCA.

The Florida Bar also commenced action against the company, alleging that the company was engaged in the unlicensed practice of law. This action continued even after the cessation of business because the company officials had been involved with two other living trusts companies, and the Bar wanted an injunction that would prevent the recurrence of the unlicensed practice of law. The company contended that its sales staff was not practicing law because the Supreme Court's 1992 *Living Trusts* decision authorized "gathering the necessary information for the living trust" by nonlawyers. In ruling on the Bar's complaint, the Florida Supreme Court held:

[W]e find that ASCA's purported reliance on our language in *Living Trusts* as condoning its activities here is an unreasonable interpretation of the phrase "gathering the necessary information." Under the untenable guise of "gathering information," nonlawyer ASCA employees answered specific legal questions; determined the appropriateness of a living trust based on a customer's particular needs and circumstances; assembled, drafted and executed the documents; and funded the living trusts in direct violation of our clear admonitions to the contrary in [prior decisions]. The particularized legal advice and services rendered by ASCA's nonlawyer employees clearly constituted the unlicensed practice of law.

The Florida Bar v. American Senior Citizens Alliance, Inc., 689 So.2d 255, 259 (Fla. 1997).

D. Senior Estate Services

Less than eighteen months after the Florida Supreme Court's decision, Attorney General Butterworth and the Florida Bar filed coordinated but separate actions against two companies which were marketing living trusts and related documents to elderly residents of Florida. Once again, the Attorney General acted to enforce the Deceptive and Unfair Trade Practices Act and the Bar sought to enjoin the unlicensed practice of law. The American Association of Retired Persons (AARP) joined the Attorney General's action as a plaintiff. The defendant companies involved were Senior Estate Services, Inc. and Remington Estate Services of Florida, Inc. Both companies originally were incorporated in, and operated out of, Texas. A copy of the Attorney General's complaint is appended as Attachment D. The companies ceased doing business in Florida promptly upon the filing of these actions. Their business tactics, however, are worthy of description in some detail.

Senior Estate Services (SES) obtained from a marketing company the names and addresses of elderly residents of Florida. From its offices in Texas, SES mailed to elderly Floridians a card stating that an American Association of Retired Persons (AARP) report found the probate process to be outdated and costly. The mailing offered to send a new consumer guide "What Lawyers Don't Want You to Know" containing information on how to avoid probate through a living trust. Interested persons were requested to return the postage prepaid card and to include on the card their ages and phone numbers.

As intended by SES, many consumers were led to believe -- incorrectly -- that AARP endorsed the company's product. SES never intended to mail the consumer guide but rather sought the phone numbers of elderly Floridians in order to telephone them in an effort to arrange a home visit to solicit the prospective customer. The actual design of the mail solicitation was to attempt to sell to the elderly person a revocable living trust; the trust would be prepared by Remington Estate Services of Florida, Inc. which operated a trust mill in Texas. From a phone bank in Texas, elderly Floridians were called by SES staff and were told that an SES representative would be in their neighborhood "tomorrow." In truth, the representative would be in the neighborhood only if the targeted elderly resident agreed to a meeting. Every effort was made to obtain a prompt in-home meeting, and, once inside the home, a scripted sales presentation was employed.

The sales personnel, known as trust representatives were taught to spend approximately 45 minutes "warming up" the targeted customer to trust, and have confidence in, the trust representative. This might be accomplished by discussing family, children and grandchildren. The sales pitch then centered on an effort to scare the customer about the alleged costs and burdens of the probate process, and to offer the living trust documents as a substantially less expensive alternative. Trust representatives, who were nonlawyers, were encouraged by their supervisors to bash lawyers and to explain that the company was providing information that "lawyers don't want you to know."

Trust representatives used lies and deception to convince the customer to purchase a living trust and related documents. In some instances, sales personnel would ask to examine the existing will or estate planning documents of the customer. The trust representative would then say that the documents are no longer valid because of a change in the law.

Trust representatives were taught to estimate the expected value of an elderly person's estate and also to estimate the portion of the estate that would be paid to lawyers, courts, and governmental bodies -- rather than to intended beneficiaries -- because of the probate process. Trust representatives told stories, often fictitious, of drawn-out probate processes that consumed large portions of the estates of wealthy persons. In making the sales presentation to the elderly Florida resident, trust representatives overstated the value of an expected estate. For example, the value of an elderly person's home regularly was included as an asset, but the mortgage debt was not deducted from that value. In many circumstances, the elderly person's residence would not even be a part of an estate subject to probate because of joint ownership or homestead law. Other than a three-day training conducted by nonlawyers, the trust representatives had little, if any knowledge of the process or cost of probate.

Trust representatives attempted to complete the "sale" of the trust documents on the same day as the home visit and they discouraged the targeted elderly persons from taking time to contemplate the purchase. The minimum cost of the living trust and related estate planning documents offered by the companies was \$1,895.00. Although the trust representatives would tell the targeted customer that the documents were individually tailored to his or her needs, in truth the documents were form documents and virtually identical documents (other than the names of the intended beneficiaries) were provided to all elderly persons who agreed to purchase the living trust documents.

Two Florida lawyers participated in this scheme to sell living trusts, and the documents were sent to these lawyers for review prior to delivery to the customer. The customers did not meet with the lawyers nor did they pay them a fee. The lawyers executed a form letter to the customer saying that the documents conform with current law and "meet your needs as they have been communicated to my office." The lawyers also instructed the elderly purchaser **to contact them** in the event that "Congress or the State legislature enact revisions to the current estate or trust tax provisions."

If the targeted elderly person agreed to purchase the living trust and related documents, a representative of Senior Estate Services other than the trust representative scheduled a visit to the elderly person's home. This person was known as a "delivery person." The stated purpose of this home visit was to execute the trust documents, but the delivery person actually had more in mind. A primary purpose of the visit was to convince the elderly person to liquidate her assets and purchase insurance annuities offered by the defendants, who stood to make substantial monetary profit if they could convince the elderly person to buy the annuities.

The delivery person asked the targeted elderly person to show him a listing of all her assets so arrangements could be made to place assets in the name of the trust. The delivery person stated, usually falsely, that he was a trained financial consultant and would advise the elderly person if he discovered anything unusual in examining the financial assets.

One deceptive and fraudulent practice used by the delivery persons was to express surprise that the elderly person's lawyer, banker or financial planner had failed to tell the elderly person that her assets were "unprotected." This was designed to evoke a discussion of the perils of civil litigation that might result, for example, from a person continuing to drive a car at an advanced age and being involved in an accident. The intent was to scare the elderly person into believing that all of her assets could be lost quickly and could not be replaced. The elderly person was told by the delivery person that assets could be "protected" by switching to annuities, but other options -- such as increased auto insurance or

umbrella coverage -- were not suggested. One example that the defendants taught the delivery persons to cite to the targeted elderly person was that of O.J. Simpson. The elderly persons were told that Mr. Simpson lost most of his assets in the well-known civil litigation but did not lose his National Football League pension, because the pension is an annuity. The delivery persons attempted to avoid discussion of factors that mitigated against liquidation of current assets, such as the requirement to pay capital gain taxes. In sum, the presentations were not designed to present unbiased factual advice, but rather were designed to scare the elderly person and convince her to buy annuities.

By orders dated October 15, 1998, and December 16, 1999, the Supreme Court of Florida granted the petition of the Florida Bar and enjoined the Senior Estate Services officials and the Remington Estate Services officials, respectively, from engaging in the unlicensed practice of law. See Attachments E and F. A similar order prohibiting the unlicensed practice of law was entered by a Texas state court. See Attachment G.

On July 6, 2000, the Florida circuit court hearing the Attorney General's action against these companies entered a permanent injunction and final judgment in the amount of \$3,450,360.00 against Remington Estate Services, which covers restitution to consumers, civil penalties, and attorneys' fees and costs. See Attachment H. The action as to the other defendants remains pending.

II. CHARACTERISTICS OF THE PREDATORY SCHEME

Our experiences reveal many common threads joining the companies that seek to exploit elderly persons by implementing living trust scams.

A. Company Names

Each company which we have challenged in Florida has utilized a company name which suggests alliance with reputable, even if unidentifiable, senior organizations. Company names such as American Family Living Trust, American Association for Senior Citizens, American Senior Citizen Alliance, and Senior Estate Services certainly conjure an image of a senior-friendly organization. The American Senior Citizen Alliance sought further credibility by designing an envelope that appeared to come from a government agency. An effort to deceive is the only apparent explanation for a company that is engaged in the business of selling living trusts to encourage consumers to "Buy U.S. Savings Bonds."

The facts of our most recent filing against Senior Estate Services reveal a clear effort to tie the company to AARP. Of course, the company had no connection with AARP, and the company's effort to tie itself to AARP caused the organization to join the Florida Attorney General in challenging the company's deceptive practices. The company's efforts to deceive were successful. Many Florida consumers who purchased living trusts from the company told us that they did so because they believed that the trusts were endorsed by AARP; some even thought the company was an AARP affiliate.

B. Targeting Practices

It is understandable that companies offering estate planning services would market themselves to senior citizens. We stress, however, that advances in technology have made it easier for predators to target their intended victims. Whereas in 1994, the American Association for Senior Citizens implemented a door-to-door campaign to find victims, by 1998 Senior Estate Services was able to purchase from a marketing company the names and addresses of elderly Floridians. Technology and the resulting availability of data allows businesses to target people by age, by race, by national origin, or by income level -- just as it allows predatory lenders to target elderly persons with a significant amount of equity in their homes.

The data can be used for beneficial purposes to provide services to all segments of our population. But it also can be used by predators to target the groups of persons whom they believe will be most susceptible to their scam efforts.

Lawyers representing the Elder Law Section and the Real Property, Probate and Trust Law Section of The Florida Bar also report concerns regarding companies marketing living trusts by offering free "informational" seminars about revocable living trusts in areas where elderly persons reside. These seminars are advertised in local newspapers and usually are presented by persons who are not lawyers. The First Amendment protects the sharing of information and ideas, but concern has been expressed that the seminars often cross the line toward illegality by offering specific legal advice to individual consumers regarding their estate planning needs. In fact, it is logical to suspect that the purpose of such seminars is to convince the elderly attendees to purchase a revocable living trust which is being offered by the persons presenting the seminar.

C. Home Visits

Each of the companies described in Part I sought to make a sales presentation in the elderly person's home. This tactic is significant. Predators attempt to catch the victim off-guard, in a relaxed atmosphere. In such a setting, it is unlikely that the elderly person will prepare in advance or seek the advice of a daughter, son or lawyer. The Senior Estate Services personnel were taught to spend at least 45 minutes "warming up" the elderly person in an effort to gain her trust and confidence. With one-in-three of our elderly residents living alone, such visits are often welcomed. The tactic works. One victim summarized her experience with the sales representative in a manner virtually identical to the description offered by many others. She said: "He was the most comfortable warm person." With the elderly person in this state of mind, it is much easier to effectuate the sale.

D. High-Pressure Sales Tactics

Even after confidence is gained, the sales representatives use high-pressure tactics to sell the product. The sales presentations are well-scripted. In fact, they have to be since the sales representatives know little, if anything, about estate planning, wills or trusts. The trust representatives working for Senior Estate Services were hired through newspaper ads and were prepared by only three days of training in sales tactics. No particular education or prior experience was required. No background check was performed. One trust representative continued to "assist" a cognitively-impaired man he had met at a home visit, and eventually stole most of the man's assets. This trust representative was arrested by local law enforcement.

Of course, none of the sales representatives have been lawyers, and yet they readily counsel that an elderly person's will or existing trust is invalid. They are taught to misrepresent facts about wills and trusts. Their objective is to sell a product and they have only one product to sell regardless of the elderly individual's needs.

E. Complete the Sale Today

One component of the pressure sales tactics deserving special attention is the effort to complete the sale before leaving the home of the elderly person. Predators do not want the elderly person to have time to think over the proposal, or to seek advice from their children or legal counsel. In the lending context, this has been referred to as completing the deal "before the victim comes out from under the ether." These contingencies are considered in making the sales presentation. For example, in warming up the victim, the sales person might ask the elderly person if she is independent and able to make her own

decisions --- she invariably says yes. If she later seeks time to discuss the proposed living trust with her children, the sales person will remind her of her previously confirmed independence.

Our experience demonstrates the extreme to which predators will go to complete the sale on the same day as the home visit. When one elderly widow told a trust representative that she was not prepared to write a check for \$1,895.00 and that she did not want to charge that much to a credit card, he asked if she had money in the bank. He then drove her to the bank so that she could withdraw the funds. An alert bank teller knew that the withdrawal was contrary to the woman's normal banking practices and also noticed that she appeared nervous. When she questioned the woman about the reason for the withdrawal the elderly woman replied: "I'm getting a will made." The bank teller notified her manager who called the police. After the police arrived, the woman decided not to complete the transaction.

F. Disregard for the Elderly Person's Needs

The sales representatives generally state that the trust documents will be tailored to their individual needs and desires. At best this means that the documents will list the beneficiaries whom the individual desires to receive the property upon death. Otherwise the statements are false, since all persons receive the same form documents. An elderly couple in Florida requested that a sales representative provide trust documents that deviated from the standard forms. The company, however, provided only the standard forms. The documents subsequently were criticized by the elderly couple's lawyer (because the trust did not meet their specific needs), by the elderly couple's banker (because accounts could not be maintained as the couple desired), and by the elderly couple's stock broker (because their accounts could no longer function in the manner that the couple desired).

G. Lack of Regard for State Law

Often the companies marketing living trusts are acting to sell the documents in many states without regard to the differences in legal requirements among the states. For example, witness requirements for execution of various documents may differ from one state to another. When executing the living trust, the elderly Floridian also revokes a prior will or trust that they may have had. If the new document is invalid, the person simply may be left without an estate plan. This is not hypothetical. Florida attorneys experienced in wills, trusts, and estate administration have determined that the legal documents provided by Senior Estate Services and Remington Estate Services to some elderly Florida residents do not satisfy the requirements of Florida law. An elderly resident of Sarasota County, Florida who had purchased the trust documents died in 1997. The children of the deceased presented the documents to a lawyer for review. The lawyer determined that several important steps to establish an effective trust had not been taken and that the documents may not satisfy the requirements of Florida law. Since no prior will was found, the lawyer determined that the deceased had died intestate, and a full probate administration was commenced.

H. Pressure to Buy Annuities

The Senior Estate Services case also revealed an underlying scheme to sell annuities in the same deceptive manner that living trusts were marketed. High-pressure sales tactics were used with no regard for the needs of the elderly persons. An 83 year old resident of Palm Beach County was subjected to **seven continuous hours** of a sales pitch to sell her substantial stock holdings and purchase annuities. The sales person utilized the car accident and O.J. Simpson examples. The woman resisted for hours citing the sentimental value of the stock which was acquired over many years with her now-deceased husband. Finally, she gave into the pressure and agreed to sell her stock and purchase the annuities. When her financial advisor became aware of the decision, he telephoned the elderly woman and advised

her that the sale would trigger a very large capital gains tax liability. The financial advisor told her that no company that had her best interests in mind would propose the transaction offered by the sales representative.

As the Senior Estate Services case gained publicity, other Florida lawyers told us of clients of the age of 80 and over who were sold annuities which would not provide a cash flow for 15 years. One attorney told of a client who was advised to purchase annuities with all of the client's IRA funds. The client was required by federal law to take an IRA distribution each year, but the annuity contract precluded a withdrawal without penalty for 15 years. Such transactions clearly are not in the best interests of our elderly residents.

III. SUGGESTIONS FOR ADDRESSING THIS ISSUE IN THE FUTURE

As noted at the start, the various scams to exploit the elderly employ similar marketing and sales techniques and are successful because of the characteristics and vulnerabilities of our elderly population. In fact, when we successfully shut down the business of Senior Estate Services, a principal of the corporation reportedly stated that he was considering becoming a mortgage broker. Consumer education and strict, coordinated law enforcement are needed to address the problems. Our experiences in Florida teach that continued vigilance is important since the living trusts scams seem to surface periodically even after enforcement efforts which receive wide publicity are brought.

Since the marketing and sales tactics of predators do not vary much, consumer education could cover a variety of topics. For example, senior citizens should be cautioned about people who want to enter their homes to make a sales presentation, just as they have often been cautioned about telemarketing scams. If a seller is legitimate, she will always afford the senior citizen an opportunity to take time to make up her mind, and to consult with family, lawyers and advisors.

The education of elderly persons regarding living trusts scams, however, also presents challenges beyond normal education as to predatory practices. That is because many of our elderly citizens distrust lawyers, fear lawyers or have concern that a lawyer will charge too much. The predators seem to suspect this, since a standard routine is to bash lawyers during the sales presentation and to tell elderly persons that they are receiving information that lawyers don't want them to know. Efforts to stop the marketing of living trusts by nonlawyers are sometimes criticized as an effort to protect the "turf" of lawyers. In reality, the enforcement efforts are designed to protect the elderly consumers from the damaging consequences which we have described. Regarding costs, Senior Estate Services charged a minimum of \$1,895.00 for a living trust and related documents; the immediate past chair of the Elder Law Section of The Florida Bar tells us that her estate planning that utilizes a revocable living trust and related documents usually cost the consumer about \$850.00.

The challenge for our state bars and their members is to educate elderly consumers that quality legal services are available to the average citizen at an affordable price --- and that the use of such services is in the consumer's best interest. We believe that we are making some progress on this issue in Florida, since the Elder Law Section of the Florida Bar (whose members often devote their careers to meeting the special needs of individual elderly citizens) has been the fastest growing section of The Bar.

AARP can also play a valuable role in consumer education. It is clear that our senior citizens look to this organization for advice, and that they listen to what the AARP has to say. We also believe that the work and consumer education efforts of this Special Committee can be very helpful in eliminating various types of exploitation of the elderly.

Training programs regarding exploitation of the elderly also should be directed to law enforcement agencies. Unfortunately, we have experienced situations in Florida wherein law enforcement officials have failed to pursue citizen complaints regarding the deceptive marketing of living trusts. The reason given to the citizens was that complaint involved a "civil matter." Victims of these types of scams may believe it appropriate to contact law enforcement agencies in the first instance, and it is important that law enforcement pursue such complaints and make any necessary referrals to enforcement agencies. It also would be helpful if law enforcement agencies built the capacity to inform each other about the specific complaints of elderly exploitation that are received; such coordinated efforts may reveal that what appears to be an isolated incident is actually a pattern or practice of exploitation of the elderly.

Our experience in Florida confirms the benefits of coordinated law enforcement. All of our lawsuits to date have involved unlicensed practice of law issues, as well as deceptive and unfair trade practices. Enforcement efforts by The Bar and the Attorney General complement each other. Our lawsuits demonstrate that the effort is not merely to protect the turf of lawyers, but to remedy real and serious injury to consumers. And such real and serious injury confirms why it is important for our Supreme Court in Florida to enjoin the unlicensed practice of law.

We have also learned that coordination with other state Attorneys General is important. The companies that have effectuated living trust scams in Florida have performed identical scams in other states. The joint efforts among the states in the American Association for Senior Citizens matter were very effective; and our recent coordination with Texas in the Senior Estate Services matter resulted in a Texas court order enjoining the same conduct that was enjoined in Florida. Although we recognize that the resources of the Federal Trade Commission are regularly stretched, the work of that agency may be particularly beneficial in remedying multi-state living trust scams.

In Florida, we also are using the resources of our Civil Rights staff to address the exploitation of the elderly. We have taken this step not merely to throw more resources at the problem, but rather because we believe that exploitation of the elderly presents important civil rights concerns. Like similar situations of race or national origin discrimination, elderly persons are targeted for exploitation because of an immutable characteristic. Some of our nation's civil rights laws, such as the federal Equal Credit Opportunity Act, 16 U.S.C. 1691, actually prohibit exploitation on the basis of age. But even as we use other laws, such as consumer protection laws, to achieve our objectives, we want to employ tactics, investigative techniques and strategies which are used in civil rights cases.

We must also admit the shortfalls of litigation as a means of redressing the harm caused by living trust scams. The companies effectuating such scams usually are thinly financed, and even though we also sue individual officers, it is difficult to obtain full monetary recourse for victims. The challenged conduct often leaves the estate plans of the victims in disarray. Is their trust valid? Does it meet their needs? Enforcement agencies are not well equipped to address these issues. In Florida, we have attempted to refer victims to private lawyers who can assess their individual situations. But none of us can repair the damage that is caused when the purchaser of the trust dies and, because of legal deficiencies in the trust documents, the deceased's assets are not distributed in the manner that she intended.

Notwithstanding these problems, we will continue to implement an aggressive law enforcement program that hopefully will discourage scam artists from targeting elderly residents of the State of Florida.

IV. CONCLUSION

On behalf of Attorney General Bob Butterworth, I thank this Committee for taking on this important issue and for conducting this hearing. As your work progresses, we are willing to assist you in any way

possible. We welcome your suggestions for improving our programs to protect the elderly.

1. See **The Approaching Storm**, A Position Paper on Elder Abuse by Florida Attorney General Robert A. Butterworth, prepared for The National Association of Attorneys General Hearing on Elder Abuse, Deerfield Beach, Florida, May 12, 1999.